

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	
)	8:10CR146
Plaintiff,)	
)	
vs.)	ORDER
)	
RICHARD COSTANZO,)	
THERESA COSTANZO,)	
JANNA WASKO and)	
MICHAEL WASKO,)	
)	
Defendants.)	

UNITED STATES OF AMERICA,)	
)	8:10CR425
Plaintiff,)	
)	
vs.)	ORDER
)	
RICHARD COSTANZO.)	
)	
Defendant.)	

These matters are before the court on the motions of the government to consolidate cases for trial (Filing No. 138 in Case No. 8:10CR146 and Filing No. 20 in Case No. 8:10CR425). Defendant Richard Costanzo has filed an opposition to such consolidation in both cases (Filing No. 140 in Case No. 8:10CR146 and Filing No. 21 in Case No. 8:10CR425). Defendants Theresa Costanzo, Janna Wasko and Michael Wasko have not opposed the motion to consolidate. During a Rule 17.1 Conference on January 7, 2011, government's counsel represented that plea agreements have been presented to defendants Theresa Costanzo, Janna Wasko and Michael Wasko and negotiations are in their final stages.

The court finds the charge set forth in the Indictment in Case No. 8:10CR425 could be properly joined with the charges in the Superseding Indictment in Case No. 8:10CR146 pursuant to Fed. R. Crim. P. 8(a) as the witness intimidation charge in Case No.

8:10CR425 arises out of the same conspiracy as set forth in Count I of the Superseding Indictment in Case No. 8:10CR146 and is factually interrelated. **See** Fed. R. Crim. P. 13. The court would hesitate to consolidate the two cases if any of the co-defendants of Richard Costanzo were to proceed to trial because such a joint trial of the charges would unfairly prejudice any defendant other than Richard Costanzo under the provisions of Fed. R. Crim. P. 14(a). However, since the charges against the co-defendants are being resolved, the charges against Richard Costanzo may be consolidated. Should the charges against any one of Richard Costanzo's co-defendants not be resolved before trial, this order of consolidation may be reconsidered.

IT IS ORDERED:

The government's motions to consolidate cases (Filing No. 138 in Case No. 8:10CR146 and Filing No. 20 in Case No. 8:10CR425) are granted.

ADMONITION

Pursuant to NECrimR 59.2 any objection of this Order shall be filed with the Clerk of the Court within fourteen (14) days after being served with a copy of this Order. Failure to timely object may constitute a waiver of any objection to the Order. The brief in support of any objection shall be filed at the time of filing such objection. Failure to file a brief in support of any objection may be deemed an abandonment of the objection.

DATED this 7th day of January, 2011.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge